

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

MAY 24 1994

In the Matter of)	
)	
Implementation of the Cable Television)	MM Docket No. 92-265
Consumer Protection and Competition)	
Act of 1992)	
)	
Development of Competition and)	
Diversity in Video Programming)	
Distribution and Carriage)	

COMMENTS ON PETITION FOR PARTIAL RECONSIDERATION

GTE Service Corporation, on behalf of its domestic telephone operating companies (GTE), pursuant to Section 1.4 of the Commission's Rules, 47 C.F.R. § 1.4, herewith respectfully submits these Comments on the Petition for Partial Reconsideration filed by the Wireless Cable Association International, Inc. (WCA).¹

I. Introduction.

GTE supports WCA's Petition. GTE agrees that the narrowness of the language set forth in Section 76.1302(a) of the Commission's Rules, *apparently* limiting standing to video programming vendors, undermines the purpose of Section 616 of the Act, 47 U.S.C. § 616. Indeed, it cannot be disputed that multichannel video programming distributors (MVPDs) have suffered the coercion which Section 616 seeks to address. *See* 47 U.S.C. § 616(a)(2). But, limiting standing as aggrieved parties to video programming vendors alone effectively renders Section 616's prohibition of such

¹ On December 15, 1993, WCA filed the instant Petition for Partial Reconsideration (Petition) of the Second Report and Order (SR&O) in this proceeding, *Implementation of Sections 12 and 19 of the Cable Televisions Consumer Protection and Competition Act of 1992 - Development of Competition and Diversity in Video Programming Distribution and Carriage*, FCC 93-457, 1993 FCC LEXIS 5415, 73 Rad.Reg.2d (P&F) 1350 (1993). Notice of WCA's Petition appeared in the Federal Register on May 9, 1994.

coercion illusory. This result is not compelled by the language of Act and is clearly inimical to the Congressional objectives underlying Section 616.

II. MVPDs Clearly Have Standing As Aggrieved Parties to Complain Under Section 616.

The purpose of Section 616 is quite simple: to protect both video programming vendors *and* emerging competitors from just a few of the abuses entrenched cable interests have used in a effort to preserve and enhance their monopolies. Specifically, Section 616 seeks to restrain cable operators from utilizing their market power to coerce a financial interest in a program service, to require the exclusivity of programming as a condition of carriage or to restrict competition through discriminatory selection, terms or conditions of carriage. 47 U.S.C. § 616(a)(1)-(3). That Congress had ample evidence of such anti-competitive conduct by cable operators is not even debatable. *See, e.g.,* WCA Petition, at 4 & n.7.

WCA is entirely correct in recognizing that cable operators with sufficient market power to coerce programmer exclusivity clearly have ample dominance to coerce programmer silence. But, if pursuant to Section 76.1302(a) *only* programmers may complain as aggrieved parties under Section 616, then Section 616 is indeed meaningless. Clear Congressional intent would thereby be frustrated by such a narrow rendering of the statute.

The language of the statute does not compel this unreasonable result. Just the opposite is true. The plain purpose of Section 616 is to protect not only programmers, but "other multichannel video programming distributors" from prohibited coercive conduct.

" . . . prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights *against other multichannel video programming distributors* as a condition of carriage on a system."

47 U.S.C. § 616(a)(2) (emphasis added). Thus, it is irrelevant whether a cable operator alone, or in concert with some MVPD, engages in the prohibited coercive conduct --

other MVPDs are harmed. Like programmers, these *other* MVPDs are parties specifically injured by the conduct Section 616 forbids. Therefore, their remedy for such conduct properly lies in Section 616. In fact, to suggest otherwise would mean that Congress unequivocally found MVPDs to be harmed by the prohibited conduct, but yet afforded them no remedy. This would truly be a nonsensical result.²


III. Conclusion.

For the reasons stated hereinabove, WCA's Petition is well-taken and GTE therefore joins WCA in respectfully urging the Commission to amend Section 76.1302(a) of its Rules to specifically afford any MVPD aggrieved by a violation of Section 616 of the Act standing to file a complaint.

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone operating companies

Ward W. Wueste, Jr., HQE03J43
John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6969



Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5276

May 24, 1994

Their Attorneys

² The conduct prohibited by Section 616 is distinct from that prohibited by Section 628, even though in both cases MVPDs are injured by the prohibited conduct. Therefore, Section 628 provides no remedy for MVPDs which are harmed by Section 616 prohibited conduct.

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments on Petition for Partial Reconsideration" have been mailed by first class United States mail, postage prepaid, on the 24th day of May, 1994 to all parties of record.


Ann D. Berkowitz